attends it in this country. Practically all jurisdictions require covenants of warranty, or an equivalent, in order to raise the estoppel, but quarrel on the effect of the estoppel. A Massachusetts decision, *Trull* v. *Eastman*, 3 Met. 121, holds that the estoppel passes the actual title at law. Other courts hold to the apparently sounder view that the covenant of warranty operates as a personal rebutter preventing the grantor from setting up his estate, or "as if a particular averment had been introduced, and the grantor was estopped by his deed from denying its efficacy." See Rawle on Covenants for Title, 3d edition, p. 412, notes 2 and 3. According to this view the grantee's remedy would be purely in equity. Again, the assignment is supported, regardless of the covenant of warranty and its attendant estoppel, not as a conveyance, but as an executory agreement to convey, a present contract to take effect when the estate comes *in esse*, or as creating an equitable ownership to be changed to an absolute property when the son actually inherits. *Bayler* v. *Commonwealth*, 40 Pa. St. 37. In these courts the conveyance of an expectant estate, and a contract for the assignment *in futuro* of personalty not *in esse* at the time of the contract, are regarded in the same light. Such a theory has at least the merit of doing full justice to all parties without violating any principles of law or equity.

In nearly all jurisdictions such conveyances are closely scrutinized, owing to the ready opportunities for fraud. That is one reason why a covenant of warranty is held necessary in so many jurisdictions. Everywhere the grantee must have sufficient consideration. The conveyance is looked upon with favor when it is known and approved by the party from whom the estate is to be derived. To invalidate the conveyance in such a case would be to defeat the intent and interest of all parties. In this case which the Kentucky court had to decide everything is favorable. There is a covenant of warranty, with good consideration, absence of fraud, and assent of the father. Under these circumstances, most courts of equity would hold a son's conveyance of his expectant estate to be valid. See 7 HARVARD LAW REVIEW, 429.

INCORPORATION BY REFERENCE — STATUTE OF FRAUDS. — The note or memorandum required by the Statute of Frauds must contain certain terms. If some of those terms are on one paper and others on another, when may the two papers be read together? This question has been answered by the English courts in various ways; at first they were somewhat strict, but for the last twenty years they have adopted a much looser rule. A recent case, however, *Potter* v. *Peters* (72 L. T. Rep. 624), looks rather like a return to the older view.

The whole subject is much confused by talking about parol evidence. The question is said to depend on whether parol evidence is admissible to show what the writing referred to, or under what conditions it was written. The difficulty, however, does not lie with any rule of evidence: there is no rule of evidence which forbids one to introduce both writings or to show all the accompanying circumstances. The real question is, What do these facts, when admitted, prove? Do they furnish a note or memorandum containing the requisite terms? One writing contains the defendant's signature and some of the terms, the other writing (assuming it to be unsigned) contains the lacking terms. Are the circumstances such that the second may be considered as part of the first, so as to con-

nect the whole with the defendant's signature? This is a question in the law of incorporation by reference, not in the law of evidence.

The views expressed by the English courts seem to resolve themselves into one of the two following propositions: (1) that the signed document must contain a reference to some other writing, or (2) that it need only refer to a transaction, of which the other writing in fact forms a part.

At the beginning of this century the first of these views was modified by a requirement that the identity of the writing referred to must appear from the reference itself. In *Boydell* v. *Drummond*, 11 East, 142 (1809), there was a prospectus of sale, and the defendant signed a book headed "Shakespeare Subscribers, their Signatures." During the argument Lord Ellenborough said, "What is there in the title to refer to the particular prospectus rather than any other? If it had referred to the particular prospectus then published, it would have helped the plaintiff over his difficulty." This early modification, however, was dispensed with in *Peirce* v. *Corf*, 9 Q. B. 210 (1874), where the court adopted without limitation the view expressed in the first of the above propositions: "On the document itself there must be some reference from one to the other, leaving nothing to be supplied by parol evidence except the identity, as it were, of the document." Though couched in terms of evidence, this amounts to saying that when the signed paper contains a reference to some other writing, whether to a particular one or not, and there exists another writing which is shown (no matter how) to be the one referred to, the second writing can be incorporated into the first, and the defendant's signature will thus be annexed to both in a way satisfactory to the statute.

After *Peirce* v. *Corf* there came a series of cases, in which the courts, though professing to follow the first rule, seem in substance to have adopted the second, namely, that if a signed document refers to a transaction generally, it will incorporate any document connected with that transaction.

In *Long* v. *Millar*, 4 C. P. Div. 450 (1879), the signed document referred to "the purchase," — not to any document connected with the purchase, but to the transaction generally. The court there incorporated a paper containing the plaintiff's agreement to buy, and tried to reconcile the case with the former rule by construing "the purchase" to mean "the agreement to purchase." In *Studds* v. *Watson*, 28 Ch. Div. 305 (1884), the second proposition was squarely stated by North, J., as follows: "There is a parol agreement proved to which both these documents refer. All the terms of this parol agreement are found in one or the other of the two documents, and are in themselves sufficient to constitute a good memorandum within the statute. . . . I do not think it is necessary in this case that these two documents should refer the one to the other." In that case, to be sure, both papers were signed, but the court appears not to have noticed the fact. Again, in *Oliver* v. *Hunting*, 44 Ch. Div. 205 (1890), there was a letter acknowledging the receipt of a check "on account of the purchase money for the Fletton Manor House estate," and this was held to refer to and incorporate a previous memorandum relating to this transaction. There was here no reference to a document, but merely to the transaction of which the document was a part. Thus at this period the English courts had abandoned the first rule and had virtually adopted the second.

In 1895 the question came up again in *Potter* v. *Peters*, *supra*.

Here the defendant's agent, who had already written to the defendant informing him of an offer, wrote a second letter to his solicitor, putting him in communication with the buyer's solicitor. The Court refused to connect the two letters. This seems to point to the older rule that the signed document must refer to some other writing, not simply to the transaction generally.

It may be doubted whether the English courts have been justified in stretching the doctrine of incorporation by reference to the extent to which the cases of *Studds* v. *Watson* and *Oliver* v. *Hunting* appear to go. While one may well enough be held to have adopted and signed a paper to which he has in a signed writing referred, it is at least going far to say that the signature can be carried over and attached to a writing which is not connected with the first in any other way than that it is a part of the same transaction.

The foregoing considerations are submitted as applying to a case where an unsigned document is sought to be incorporated into one that is signed. When both are signed, there should be no necessity for connecting the two; for the defendant has subscribed his name to all the requisite terms, and this would seem to be all that the statute requires. This view has been taken in *Thayer* v. *Luce* (22 Ohio St. 62), and on this ground *Potter* v. *Peters* might well have been decided differently.

MAY THE VENDOR OF THE GOODWILL OF A BUSINESS SOLICIT HIS OLD CUSTOMERS? — What passes by the sale of a goodwill of a business? What obligations are imposed on the vendor by reason of the sale? These troublesome questions have again been raised in the case of *Trego* v. *Hunt*, 12 *The Times* L. R. 80, decided last December in the House of Lords. The decree in the case restrained the vendor of the goodwill from soliciting the trade of his old customers in person, by agents, or by letter. The case of *Labouchere* v. *Dawson* (L. R. 13 Eq. 322), decided in 1874 by Lord Romilly, M. R., and overruled twelve years later in the Court of Appeals by *Pearson* v. *Pearson* (27 Ch. Div. 145), is re-established, and *Pearson* v. *Pearson* is in turn overruled. The reasoning is this. A vendor of the goodwill sells the benefit of the connection of his concern, that is, the chance that the customers will continue their patronage. It is obvious that by solicitation of the old customers, the vendor, on setting up a similar business, may greatly lessen the purchaser's chance of retaining that patronage. But a man may not depreciate what he has sold: therefore the vendee of the goodwill is entitled to protection, and his vendor will be restrained accordingly from soliciting the old customers. "It is immaterial," says Lord Herschell, "whether the obligation on the part of the vendor to refrain from canvassing the customers is to be regarded as based on the principle that he is not entitled to depreciate that which he has sold, or as arising from an implied contract to abstain from any act intended to deprive the purchaser of that which has been sold." Of course, a logical application of either principle would carry the courts far beyond restraining a mere solicitation of old customers. This fact is recognized; but it is acknowledged that it is now too late to question the authorities which establish the vendor's right to set up a similar business (*Shackle* v. *Baker*, 14 Ves. 468), to advertise his business and solicit customers in any public way (*Labouchere* v. *Dawson*, L. R. 13 Eq. 322), so long as he does not use the firm name, or represent that he is continuing